

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

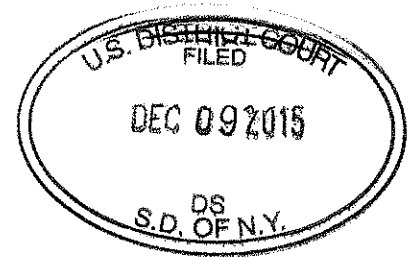
UNITED STATES OF AMERICA

v.

CASE NO. 15 CR-100 (GHW)
HONORABLE GREGORY H. WOODS

SEAN MCCABE
_____ /

**DEFENDANT'S OBJECTIONS TO HIS
PRESENTENCE INVESTIGATION REPORT**



COMES NOW, Defendant, SEAN MCCABE, by and through his undersigned attorney, Robert Gershman, and files his Objections to the Presentence Investigation Report, and states:

1. Release Status – Page 1 (not numbered) – Defendant was arrested on December 2, 2014, not December 3, 2014.
2. The Offense - Pages 3, Paragraph 1 – This paragraph fails to name co-defendant Tirso Dominguez (a/k/a “Tito”), charged by Superseding Information on October 2, 2015 [DE64]. As well, while we agreed to the waiver of Indictment and filing of an Information, Defendant did not personally conspire in New York, his co-defendant, Christo-Fares, did so in furtherance of the overall conspiracy.
3. The Offense - Pages 3, Paragraph 2 – This paragraph omits that co-defendant Tirso Dominguez’ Superseding Information contains a forfeiture allegation.
4. The Offense - Pages 3, Paragraph 3(f) – Defendant asserts that this paragraph should reflect that Defendant has already pleaded guilty and accepted responsibility to the Government, His Honor, and USPO Kim. Therefore, Defendant is entitled to the benefit of a three level reduction for his timely acceptance of responsibility as more specifically set forth in the offense level computation (page 8, paragraphs 38-39).

5. Adjustment While In Custody – Page 4, Paragraph 6 – During the Presentence Investigation Report Interview, United States Probation Officer Johnny Kim was personally handed numerous documents proving the Defendant's tremendous work, educationally and otherwise, while pre-trial detained in the Metropolitan Correctional Facility. As well, USPO Kim was provided the contact information for the MCC coordinator responsible for Mr. McCabe's tutoring/teaching. For whatever reason(s) this information was not included by USPO KIM within his authored report. Mr. McCabe will provide same to the Court in his Sentencing Memorandum due on or before December 29, 2015. For purposes of this document, Defendant objects for the failure to include any reference to his unprecedented work as a teacher and educational pioneer during his pre-trial detention within MCC.
6. The Offense Conduct - Pages 5 and 6, Paragraphs 11, 12 and 22 –Mr. McCabe first met or had a discussion with co-defendant Cristo-Fares after the crimes were over and they were both in a certain holding cell waiting their respective initial appearances. To the extent these PSR paragraphs are used to satisfy a belief that McCabe and Cristo-Fares previously discussed plans to open a bank account in Panama cannot be accurate. Mr. McCabe, having never before his arrest met or talked with Mr. Cristo-Fares, denies that he and Mr. Cristo-Fares personally met or talked about any business issues, including banking in Panama.
7. The Offense Conduct – Page 6, Paragraph 17 – Defendant asserts that while he did say things relative to a plane and being in the business, Mr. McCabe denies that he is/was a drug/cocaine trafficker at any prior time or place.
8. The Offense Conduct – Page 6, Paragraph 19 – The PSR figures are incorrect. Mr. McCabe took \$13,000 while co-defendant Tirso Dominguez took the remaining US currency for delivery/split as Dominguez and Cristo-Fares deemed fit. Mr. McCabe has been lied to by his

- co-defendant concerning the financial agreement/split between Dominguez and Cristo-Fares. McCabe only received \$13,000, with the remaining US currency delivered to Dominguez.
9. The Offense Conduct – Page 6, Paragraph 20 - This entry is factually incorrect, irrelevant, and should be deleted. Mr. McCabe was not operating an automobile at the time of his arrest. Mr. McCabe possessed a valid concealed weapons permit at the time of his arrest. Mr. McCabe never used a gun in furtherance of any alleged crime(s) or relevant conduct contained in this Information. Mention of the gun draws the reader's attention and the BOP to an inherent adverse reaction and possible more severe designation. Factually, the lawful gun was unloaded and in the glove compartment of a car Mr. McCabe was not in at the time of his arrest (approximately 100 yards away). This fact is supported by other witness(es).
 10. Defendant's Criminal History – Page 9, Paragraphs 43 and 44 – Defendant did not renew his telemarketing license upon advice of his then counsel.
 11. Offender Characteristics – Page 10, Paragraph 57 – Defendant's Mother is 76 years of age, not 75.
 12. Offender Characteristics – Page 10, Paragraph 58 – Defendant advised USPO Kim that he and his Mother have a very cognitive, important and close relationship. Defendant never said he was not particularly close to his Mother. This statement should be corrected.
 13. Offender Characteristics – Page 11, Paragraph 64 – Defendant advised USPO Kim that he had a hemorrhagic stroke in his brain stem and was treated by Dr. Stale in Orlando, Florida. The PSR should accurately reflect same.
 14. Offender Characteristics – Page 11, Paragraph 65 – Defendant told USPO Kim that he fractured the T1, T2 and C3 vertebrae in addition to the injuries already listed in the relevant paragraph. The PSR should accurately reflect same.

15. Substance Abuse – Page 12, Paragraph 71. The hospital Defendant was admitted for in-patient drug treatment was named the Marshall Hale Hospital, not “Hill”.
16. Special Skills – Page 13, Paragraph 78 – Defendant was a certified scuba diver, not driver.
17. Special Skills, Page 13, Paragraph 80 – There is no dispute that Defendant possessed a valid concealed weapons permit, physically in his wallet, at the time of his arrest.
18. Employment Record – Page 14, Paragraph 84 – Contrary to USPO Kim’s assertion, Defendant not only disclosed his prior employment to pre-trial services in the Southern District of Florida upon his arrest, but same was discussed in open Court at Defendant’s first detention hearing. The paragraph should be changed to reflect Defendant’s honesty and not his failure to disclose information.
19. Employment Record – Page 15, Paragraph 92 – Defendant was a professional poker player on major tours, including the European Poker Tour. During his period of professional poker playing, Defendant contributed his expertise as a poker psychology columnist for Bluff Magazine, as well as co-hosting and appearing on sever major television and radio programs concerning the expertise and playing of poker.
20. Financial Condition – Page 16, Paragraph 101 – Defendant advised pre-trial services in the Southern District of Florida that the subject Columbian Bank Account was a company account, not personal, and is a closed account, not open.
21. Impact of Plea Agreement – Page 17, Paragraph 107 – Defendant never agreed to moving several million dollars, and never said he had the ability to actually move several million dollars by chartered fishing boat or otherwise. The CI/CS did ask Defendant about this topic, but there was never an agreement in this regard.
22. Substance Abuse – Page 12, Paragraphs 68-71 - Defendant requests he be recommended to participate in the 500 hour drug program.

Motions

1:15-cr-00100-GHW USA v.
Cristo-Fares et al

ECF,PRIOR

U.S. District Court**Southern District of New York****Notice of Electronic Filing**

The following transaction was entered by Gershman, Robert on 11/29/2015 at 9:11 AM EST and filed on 11/29/2015

Case Name: USA v. Cristo-Fares et al

Case Number: 1:15-cr-00100-GHW

Filer: Dft No. 2 - Sean McCabe

Document Number: 78

Docket Text:

MOTION Defendant's Objections to His Presentence Investigation Report . Document filed by Sean McCabe. (Gershman, Robert)

1:15-cr-00100-GHW-2 Notice has been electronically mailed to:

Alvin E. Entin aentin@hotmail.com

Emil Joseph Bove , III Emil.Bove@usdoj.gov, USANYS.ECF@USDOJ.GOV

Geoffrey St. Andrew Stewart gstewart.defender@gmail.com

Robert Scott Gershman robert@rglawfirm.us

1:15-cr-00100-GHW-2 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1008691343 [Date=11/29/2015] [FileNumber=15675603-0] [1e02727b41cd88ad33a8f2d8ca0c7a7aa3756d920e61099a4be6969ac588d70f3286bb7facca81dd2bf02afc2ec2867152a0c4f803b785941eaba5ae6404d067]]



Robert Gershman <robert@rglawfirm.us>

Activity in Case 1:15-cr-00100-GHW USA v. Cristo-Fares et al Motion for Miscellaneous Relief

1 message

NYSD_ECF_Pool@nysd.uscourts.gov <NYSD_ECF_Pool@nysd.uscourts.gov> Sun, Nov 29, 2015 at 9:11 AM
To: CourtMail@nysd.uscourts.gov

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U.S. District Court

Southern District of New York

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Case Number: 1:15-cr-00100-GHW
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MOTION Defendant's Objections to His Presentence Investigation Report . Document filed by Sean McCabe. (Gershman, Robert)

1:15-cr-00100-GHW-2 Notice has been electronically mailed to:

Alvin E. Entin &nbsp; &nbsp; aentin@hotmail.com

Emil Joseph Bove , III &nbsp; &nbsp; Emil.Bove@usdoj.gov, USANYS.ECF@USDOJ.GOV

Geoffrey St. Andrew Stewart &nbsp; &nbsp; gstewart.defender@gmail.com

Robert Scott Gershman &nbsp; &nbsp; robert@rglawfirm.us

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Document description:Main Document**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp_ID=1008691343 [Date=11/29/2015] [FileNumber=15675603
-0] [1e02727b41cd88ad33a8f2d8ca0c7a7aa3756d920e61099a4be6969ac588d70f3

11/29/2015

Gershman & Gershman, P.A. Mail - Activity in Case 1:15-cr-00100-GHW Document 79 Filed 12/09/15 Page 7 of 9

286bb7facca81dd2bf02afc2ec2867152a0c4f803b785941eaba5ae6404d067]]



Robert Gershman <robert@rglawfirm.us>

Activity in Case 1:15-cr-00100-GHW USA v. Cristo-Fares et al Note to Attorney to Re-File Document - Non-ECF Document Error

1 message

NYSD_ECF_Pool@nysd.uscourts.gov <NYSD_ECF_Pool@nysd.uscourts.gov> Mon, Nov 30, 2015 at 7:58 AM
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U.S. District Court

Southern District of New York

Notice of Electronic Filing

The following transaction was entered on 11/30/2015 at 7:58 AM EST and filed on 11/30/2015

Case Name: USA v. Cristo-Fares et al

Case Number: 1:15-cr-00100-GHW

Filer:

Document Number: No document attached

Docket Text:

*****NOTE TO ATTORNEY TO RE-FILE DOCUMENT - NON-ECF DOCUMENT ERROR.**
Note to Attorney Robert Scott Gershman as to Sean McCabe: to MANUALLY RE-FILE Document Document No. [78] Objections to Presentence Investigation Report. This document is not filed via ECF. (ka)

1:15-cr-00100-GHW-2 Notice has been electronically mailed to:

Jennifer L Brown (Terminated) jennifer_brown@fd.org

Geoffrey St. Andrew Stewart gstewart.defender@gmail.com

Alvin E. Entin aentin@hotmail.com

Emil Joseph Bove, III Emil.Bove@usdoj.gov, USANYS.ECF@USDOJ.GOV

Robert Scott Gershman robert@rglawfirm.us

1:15-cr-00100-GHW-2 Notice has been delivered by other means to:

LAW OFFICES

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November 30, 2015

United States District Court
Southern District of New York
United States Courthouse
Criminal Clerk's Office
500 Pearl Street
Room 520
New York, New York 10007

Re: Case No. 15CR100 (GHW)
USA v Sean McCabe

Dear Clerk,

Enclosed please find the following:

- Defendant's Objections to his Presentence Investigation Report; and
- A return self-addressed, pre-paid federal express envelope.

Please file the original (blue ink signature) and return a stamp copy to undersigned. Thank you for your anticipated prompt attention to these matters.

Very truly yours,



Robert S. Gershman

RSG/cmg
Enclosures